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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 69

GEORGE K. WYMAN, individually and as Commissioner of the State of New York, Department of Social Services, JACK R. GOLDBERG, individually and as Commissioner of the Department of Social Services of the City of New York,
Appellants,

v.

BARBARA JAMES, individually and on behalf of her minor child, Maurice James, and on behalf of all other persons similarly situated, *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEES

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 69

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v.

BARBARA JAMES, individually and on behalf of her minor child, Maurice James, and on behalf of all other persons similarly situated, *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEES

OPINIONS BELOW

The opinion of the district judge ordering the convening of a three-judge district court, date June 13, 1969, is reported at 302 F.Supp. 478. The decision of the three-judge court, dated August 18, 1969, is reported at 303 F. Supp. 935.

JURISDICTION

The decision of the three-judge district court granting appellee declaratory relief and a permanent injunction was entered on October 1, 1969. The notice of appeal was filed on December 20, 1969. Probable jurisdiction was noted by

this court on February 24, 1970. The jurisdiction of this court is conferred by 28 U.S.C. §1253 which provides for direct appeals of three judge courts.

CONSTITUTIONAL PROVISIONS AND STATUTES AND REGULATIONS INVOLVED

The fourth Amendment to the Constitution of the United States provides:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Title 18 N.Y.C.R.R., Section 351.10 provides as follows:

> 351.10 Required home visits and contacts. Social investigation as defined and described in sections 351.1 through 351.7, shall be made of each application or reapplication for public assistance or care as the basis for determination of initial eligibility.
>
> (a) Determination of initial eligibility shall include contact with the applicant and at least one home visit which shall be made promptly in accordance with agency policy.
>
> (b) The required home visit in the investigation of initial eligibility shall be made prior to the first grant of assistance *except*:
>
> (1) where there is emergent need and a presumption of eligibility. An emergency grant of home relief or veteran assistance or a preinvestigation grant in the federal categories may be made before the required home visit or the determination of eligibility. In such situations, the required home visit shall be made as in subdivision (a) above;

(2) where only one grant of assistance is required, as in the case of transients, the homeless, and other unusual situations in which field investigation is not feasible;

(3) where disasters or emergency situations, such as fire, flood, or weather conditions result in the loss of or temporary isolation of the home;

(4) where the need for public assistance coincides with termination of responsibility of another social or governmental agency for the applicant's maintenance. Under the usual procedure, presumptive eligibility for public assistance is substantiated prior to the person's application or immediate need for such assistance.

Title 18 N.Y.C.R.R., Section 351.21, provides as follows:

351.21 Required Contacts. Contacts with recipients and collateral sources shall be adequate as to content and frequency and shall include home visits, office interviews, correspondence, reports on resources and other necessary documentation.

(a) *Required contacts and investigations.* Required contacts and investigations shall be made not less frequently than required by board rules (see Chapter I of this Title).

(b) *Required collateral contacts.* In addition to home visits and personal interviews with the recipient, there shall be contact, as the circumstances of the individual case indicate, with relatives, employers, and other appropriate persons and agencies by visits, interviews, correspondence, conferences and telephone.

(c) *Content and quality of contacts.* All contacts with recipients and with collateral sources of information shall, insofar as possible, be directed toward reconsideration of the following variable factors of eligibility:

(1) *Financial need.* The individual requirements of the recipients shall be reviewed in relation to

changes in the household, in living arrangements, in income, and in allowance schedules in order to determine those items of basic maintenance and/or special need that should be added, deleted or changed in amount.

(2) *Financial resources*. Current availability and use of financial resources shall be reconsidered in relation to fluctuations in value or income, or the initiation of termination of rights to benefits.

(3) *Employment, employability and training for employment*. The employment, potential employability or need for training or retraining of any employable person 16 years of age or over shall be considered.

(4) *Relatives*. Changes in circumstances, which affect the ability or willingness of relatives to assist the recipient either financially or in social planning, shall be reviewed. If a legally responsible relative is failing to support according to ability and/or court order, referral for appropriate legal action shall be considered.

(5) *Special categorical requirements*. There shall be review of factors of categorical eligibility which are subject to change, such as further impairment, recovery or improvement in the condition of an incapacitated parent or permanently and totally disabled person, return of an absent parent, termination of eligibility of children because of age or leaving school, and obtaining employment. In review of a home relief case, entitlement to assistance under a federally aided category shall be considered.

(6) *Health*. Changes in health conditions shall be considered with respect to continuing eligibility, amount of grant, and required services.

(7) *Services*. There shall be a review of need for services, progress in resolving specified problems and revision of social study.

QUESTIONS PRESENTED

1. Is the sanctity of a private home of recipients of aid to families with dependent children constitutionally protected from case workers forcing entry?

2. Are home visits by case workers conducted without the consent of the client and without a warrant, "unreasonable" intrusions prohibited by the Fourth Amendment, especially since liability to criminal prosecution may result?

3. May the receipt of welfare benefits be conditioned upon the recipient's waiver of Fourth Amendment rights?

STATEMENT OF CASE

Appellants, the New York Welfare Departments, require all applicants for public assistance to be visited in their homes. Once an applicant has been accepted for public assistance she is also required to submit to periodic home visits in order to continue to receive Welfare payments.

Barbara James has been a recipient of ADC benefits for the past two years. She and her only child, Maurice, age two years, reside in the City and State of New York.

On May 8, 1969, Appellee's caseworker, Adreanne Fennell, sent her a notice that she would visit Appellee at home on May 14, 1969. Appellee, upon receipt of this notice, telephoned and explained to her caseworker that she was ready, willing and able to discuss issues relevant to her continued receipt of public assistance. But Appellee refused to allow the caseworker to enter her home. The worker informed the Appellee that she was required by law to visit her in her home. Appellee insisted she would cooperate in any way in order to provide her with the information she requested, but she would not consent to the interview in the *privacy* of her home. The caseworker informed the Appellee that if she could not gain entry into her home to interview, then her public assistance would be terminated.

As a result, on May 13, 1969, the Department of Social Services sent Plaintiff a notice of intent to discontinue public assistance. On May 27, 1969, a prior review hearing was scheduled and completed. The decision of the prior review officer upheld the caseworker's determination that refusal to allow entry into the home was proper grounds for terminating assistance. On June 2, 1969, a notice of termination of assistance was then forwarded to Appellee.

Although Appellee's assistance was terminated because she refused entrance to her caseworker, numerous other recipients, reacting out of fear solely to the threats of termination or reduction of their assistance, have allowed caseworkers entry into their homes. (See Supplemental Affidavits A33-53 in Support of Plaintiff's Motion for Preliminary Injunction.) These people, with Barbara James, assert fear of future compelled entrance into their private homes.

This suit was commenced by order to show cause on June 6, 1969, and returnable on June 10, 1969, before the Honorable Charles Tenney. On June 13, 1969, a temporary restraining order was issued and a three-judge court convened to hear Plaintiff's motion for a preliminary injunction. The three-judge court was designated, consisting of Circuit Judge Wilfred Feinberg of the United States Court of Appeals for the Second Circuit, and District Judge Edward C. McLean of the United States District Court for the Southern District of New York, in addition to Judge Charles Tenney of the District Court for the Southern District of New York. Oral argument was set and completed on June 30, 1969. On August 13, 1969, the Court, Judge McLean dissenting, rendered its written opinion holding the state policy unconstitutional. [A119] An appeal was taken to this Court with the request for a stay of the Injunction denied.

SUMMARY OF ARGUMENT

The family home is a particularly sacrosant legal entity under the Constitution, its tradition and case-law interpretation. Joining common law protections with rights of families and privacy, the law is very clear that access to homes is limited; in this case prohibited to welfare department officials.

Even if access were to be permitted, it would be a civil search. Such searches have to be constitutionally conducted with a warrant, which not being employed in New York are yet another ground of the invalidity of the home visits.

In making the receipt of welfare dependent on waiving Fourth Amendment rights New York attempts to impose an unconstitutional condition. This it may not do.

ARGUMENT

I

THE SANCTITY OF PRIVATE FAMILY HOMES DICTATES THAT NO GOVERNMENT OFFICIAL FROM THE WELFARE DEPARTMENT CAN ENTER THOSE HOMES WITHOUT THE RESIDENT'S PERMISSION.

The issue in this case is whether the State and its agents may compel their entrance into *family homes* for the claimed purposes of acting *in locis parentis*, verifying the legal status of Welfare recipients, and making criminal referrals. The Federal District Court decided, and Appellees here argue, that the family home represents a unique social and legal institution whose constitutional, traditional, and case law principles protect sanctity from invasion.

The Fourth Amendment to the Constitution explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This Amendment functions to safeguard the personal privacy, security and dignity of individuals against the arbitrary or unwarranted intrusion of government officials, particularly in the private domain of their homes [A122].

This function harks back to ancient principles:

> "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter, the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement."

This definition of sanctity was announced by William Pitt discussing entrance of government agents to exact an excise tax on cider. It is used as an explicit rationale by the Court in *Miller v. U.S.*, 357 U.S. 301 at 307 (1958). See also, *Rowan v. U.S. Post Office Dept.*, 397 U.S. 728, 737-38 (1970). Appellees contend that their poor tenements are as important to them as to any man in his cottage. They assert the protection of the line of cases which hold that the sanctity of the home lies at the heart of Fourth Amendment protections and make clear that searches of private dwelling places will be subject to the most demanding judicial scrutiny. *Boyd v. U.S.*, 116 U.S. 616, 626-30 (1886), *Silverman v. U.S.*, 365 U.S. 505, 511 (1961).

But the Constitution does much more than affirm the sanctity of the home against search even where criminal activity is involved. This Court has explained how it has broadened that protected domain in the light of two complementary principles. First, the Fourth Amendment "marks the right of privacy as one of the unique values of our civilization." *McDonald v. U.S.*, 335 U.S. 451 at 453 (1948). In *Griswold v. Connecticut*, 381 U.S. 479 (1965) the underlying ancient rights to privacy were once again reaffirmed to have continued vigor, major importance, and contemporary application. Said the Court (381 U.S. at 484):

> "The principles laid down in this opinion (*Entick v. Carrington*, 19 How. St. Tr. 1029) . . . affect the very essence of Constitutional liberty and security . . . [t]hey apply to all invasions on the part of government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense,

but it is the invasion of his indefensible right of personal security" quoting *Boyd v. U.S.*, 116 U.S. 616 at 630 (1886).

Invasions of the privacy of the home by government officials have been found to be the basis of tort actions. *Monroe v. Pape*, 365 U.S. 167, 190 (1961). The right to privacy is powerful enough to be put in the balance against First Amendment rights. Compare *Breard v. Alexandria*, 341 U.S. 622 (1951) with *Martin v. Struthers*, 319 U.S. 141 (1943). Only judicial scrutiny can decide the balances involved in making the permissible minor incursions into the privacy of the home: "When the right of privacy must yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or governmental enforcement official." *Johnson v. U.S.*, 333 U.S. 10 at 14 (1948). See also *McDonald, supra.* at 455-56.

Second, amplifying the Fourth Amendment's guarantee of the sanctity of the home into the Constitutional right of privacy, this court, in *Griswold*, explicitly recognized its connection with another Constitutional right—that of the sanctity of the family. It has been said that: "[T]hose who nurture [the child] and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). Thus, parents can send children to schools of their religious choice or select a program of foreign languages, *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). Even child-labor laws can become difficult to justify because of the possible effects on the child-parent relationship, *Prince v. Massachusetts*, 321 U.S. 158, 165-67 (1944). See also *Busey v. District of Columbia*, 129 F.2d 24 (D.C. Cir. 1942); *People v. Ewer*, 141 N.Y. 129, 36 N.E. 4 (1894). And, of course, patriotism and school boards notwithstanding, schools cannot compel flag salutes against parental wishes. *West Virginia v. Barnette*, 319 U.S. 624 (1943). Or prayers. *Engel v. Vitale*, 370 U.S. 421 (1962).

These parental rights necessitate the protection of the parent-child relationship through procedural guarantees. In *Armstrong v. Manzo*, 380 U.S. 545 (1965) a case dealing with adoption against a Father's wishes by his ex-wife's new husband this Court outlined the constitutional necessity for a hearing before that termination of parental rights. See also *Farrington v. Tokushige*, 273 U.S. 284, 298 (1927). *May v. Anderson*, 345 U.S. 528 (1953).

Privacy, the primacy of the family, the unique nature and status of a family home all combine to protect appellee's home from unwanted entrance. Yet appellants seek to justify the intrusion by a startling new doctrine of law, which flies in the face of established precedent. For, in straining to take this case out of the overwhelming weight of precedent, appellants assert that once a family is accepted for public welfare, the welfare agency becomes primarily responsible for the child. (Juris Statement 17.) They would ask this Court to sanction the loss of the Fourth Amendment right to be free from search because appellees claim that receipt of public assistance results in the loss of parental rights protected by the Constitution!

To permit searches by appellants of anyone's family home on the theory of *in locis parentis*, be the home that of Judges or paupers, is clearly unconstitutional. It is particularly pernicious here since appellant's assertion, if taken at face value, would create two classes of parents, those with full parental rights to rear their children and those whose parental rights would be secondary to the power of the state to decide what is best for the child. The distinction between the two classes would be based solely upon the poverty of one class (and its dependence on Welfare). Such a scheme is constitutionally defective. *Harper v. Board of Elections*, 383 U.S. 663 (1966). See also *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Needless to say, creating a separate class of individuals with diminished parental, privacy, and domestic rights solely because the family receives public welfare would violate basic equal protection guarantees. Welfare recipients have the same rights as other citizens,

Shapiro v. Thompson, 394 U.S. 618 (1969) and they may not be penalized for exercising them. See also *Sherbert v. Verner*, 374 U.S. 398 (1963). So, too appellants have the constitutional right to privacy and parenthood in an unscrutinized home and may not be penalized for asserting these constitutional rights.

II

WARRANTLESS SEARCHES OF HOMES, ABSENT AN EMERGENCY CRIMINAL SITUATION IS PROHIBITED BY THE FOURTH AMENDMENT.

The Appellees contend that mandatory routine home visits are never constitutionally permissible. But if this Court were to find that home visits were sometimes permissible the visits would have to be made with a warrant. Lacking that warrant, all civil home visits without consent are illegal searches.

Appellants want to search. They claim they want to verify special items, facts, even judge the morality and propriety of parental upbringing. As the District Court found, such entrance and looking is a search citing *Terry v. Ohio*, 392 U.S. 1, 17 n. 15 (1967). See also *Boyd v. U.S., supra.*

The searches conducted by caseworkers in this case comprise routine periodic searches of Welfare recipients' homes to check eligibility requirements.[1] These searches are always made without warrants. There is little question, that these periodic warrantless searches of welfare recipients' homes, had they been conducted by police officers would be held to violate Appellees' Fourth Amendment rights. The question in this context becomes then, whether the caseworker's

[1]See for general description of Welfare searches Note, 79 Yale L.J. 746 (1970). Note also that 42 USC 602(a) 10 requires all eligible applicants to be placed on the Welfare roster, yet to deny someone otherwise eligible payments because of refusal to allow entry is to add an extra illegal element of eligibility. *Cf Doe v. Shapiro*, 302 F. Supp. 761, 764 (D.Conn. 1969), *appeal dismissed*, 396 U.S. 488, *rehearing denied*, 397 U.S. 970 (1970).

periodic home visit, conducted without the issuance of a warrant, is immune from the prohibition against warrantless searches under the Fourth Amendment.

This Court has disposed of the issue of civil searches in *Camara v. San Francisco*, 387 U.S. 523 (1967); *See v. Seattle*, 387 U.S. 541(1967). (For emergency police powers for combatting crime, a subject outside this case and immensely complicated, see the lower court's opinion text and footnote at footnote 8, A. 134.)

In *Camara* and *See* searches by employees of a Health Department and Fire Department were held invalid where no search warrant was first obtained. Further, this Court has made clear in *Camara* and *See* that the Fourth Amendment's prohibition against unreasonable search would be applicable to an employee of a welfare department. *Camara, supra*, at 530-31. See, *supra*, at 543. The Court emphasized the public interest and concern in the governments conducting inspections of homes in urban population centers so that the minimum fire, housing and sanitation standards might be maintained. According to the Appellants, home visits are necessary only to aid in the determination of initial (N.Y.C.R.R. 351.10) and continuing (N.Y.C.R.R. 351.21) eligibility for public assistance. See also Goldberg Letter, [A59].

Any information which the Welfare Department seeks concerning continued eligibility can be obtained by interviews conducted at the local welfare center or at any other convenient locale. In short, if the Department needs information about the management of funds, or family composition (Goldberg Letter, A59), such information may be solicited without demanding forfeiture of constitutional rights, invasion of homes, and humiliation of individuals. The path least destructive of Constitutional rights is constitutionally mandated. See *Shelton v. Tucker*, 364 U.S. 479 (1960) and cites therein.

The case here presented is even easier to decide than *Camara* and *See*. For in *Camara* and *See* the issue still

stalks which determined *Frank v. Maryland*, 359 U.S. 360, 366 (1959)–the fear of rampaging fire or disease. It was claimed in these cases that persons may lose their lives, property may be destroyed–the time involved in securing warrants may cost lives with every second of delay created in obtaining them. Welfare recipients, on the other hand, object to regular warrantless home visits which can in no way be tied to the protection of public health and safety. Also *Camara* and *See* involve searches for particular dangerous items, not a generalized "fishing expedition". *A fortiori* the protections of the Fourth Amendment apply here.

On the other hand, welfare clients face a fear implicit in the visit that Frank, Camara and See did not–criminal prosectuion. See the statutes collected at footnote 5 of the *Amicus* brief from *San Mateo County* in conjunction with 42 U.S.C. 602(a)(16)(17)(18) (in N.Y. see 18 N.Y.C.R.R. 348 and NOLEO provisions A106). For examples of prosecutions which could result from such referrals, *People v. La Face*, 148 N.Y. Misc. 238, 266 N.Y.S. 458 (1933). See also, *People v. Pickett*, 19 N.Y. 2d 170 (1967), (Note also the implicit threat of filing neglect petitions which may lead to the loss of children. See Point I, *supra*). With this danger of criminal prosecution involved, with no conceivable immediacy of public health and safety emergencies, the reasons for insisting on warrants are even stronger than in *Camara* and *See* which established as a certainty the necessity of warrants for searches characterized as "administrative" by those seeking to invade and look into private homes. If Welfare families' homes are ever to be invaded it must be after issuance of warrants, conspicous only by their absence here.

"[T]he question is not whether the public interest justifies the type of search in question," *Camara v. San Francisco, supra*, at 533, but rather whether the governmental purposes New York seeks to achieve justified an exemption for welfare home visits from the

> one governing principle, justified by history and by current experience, [that] has consistently been followed: except in carefully defined classes of cases, a search of private property without proper consent

is 'unreasonable' unless it has been authorized by a valid search warrant. (*Camara v. Municipal Court, supra*, 387 U.S. at 528-29).

III

CONDITIONING THE RECEIPT OF WELFARE BENEFITS UPON THE WELFARE RECIPIENT'S WAIVER OF FOURTH AMENDMENT RIGHTS IS AN IMPOSITION OF AN UNCONSTITUTIONAL CONDITION.

There is no question but that a threat to terminate welfare payments unless entry is permitted is a coercive threat of Constitutional dimensions. This fact was recognized by this Court in *Lynumn v. Illinois*, 372 U.S. 528 (1963). That case involved the question of admissibility into evidence of an allegedly coerced confession. At the trial a police officer testified that when he entered petitioner's apartment:

> "I asked her who the clothing belonged to. She said they were her children's. I asked how many she had and she said 2. I asked her where they were or who took care of them. She said the children were over at the mother's or mother-in-law. I asked her how did she take care of herself and she said she was in ADC [Aid to Dependent Children]. I told her if we took her into the station and charged her with the offense, that the ADC [Aid to Dependent Children] would probably be cut off and also that she would probably lose custody of her children." 372 U.S. at p. 533.

After reciting this testimony, the Court concluded that the confession was coerced:

> "It is thus abundantly clear that the petitioner's oral confession was made only after the police had told her that state financial aid for her infant children would be cut off, and her children taken from her, if she did not 'cooperate.'" 372 U.S. at p. 534.

Although the coercion in *Lynumn* involved self-incrimination under the Fifth Amendment rather than unlawful search

under the Fourth, the principle involved is the same. Moreover, the close relationship between the Fourth Amendment and the self-incrimination provision of the Fifth Amendment in protecting one's privacy has long been recognized. See *Boyd v. United States, supra*; *Mapp v. Ohio*, 367 U.S. 643, 662 (1961) (concurring opinion of Mr. Justice Black). Particularly is this connection applicable when there are criminal overtones.

In the case at bar, the class leader, Barbara James, was told in every conceivable official way that unless she permitted the home visit her aid would be terminated. As the affidavits in this case demonstrate, that is a perpetual threat under which welfare families live.

This Court has laid to rest any doubts about the unconstitutionality of imposing such threats and conditions. For it is clear, that to force Plaintiff to choose between having her assistance terminated or consenting to a search of her home and the invasion of her privacy is to require a "choice between the rock and the whirlpool." *Garrity v. New Jersey*, 385 U.S. 493, 496 (1967). See also *Spevack v. Klein*, 385 U.S. 511 (1967); *Nash v. Florida Industrial*, 389 U.S. 235, 239 (1967); *Sherbert v. Verner, supra*. Here welfare clients are faced not only with a loss of livelihood but the possible break-up of their family. Appellants here provide welfare recipients with the choice of giving up their right to bar government officials from their homes or forfeit their assistance payments. The consent to enter which is obtained in these circumstances could never be called consent by anyone. The loss of benefits poses an immediate threat to the health and well-being of the client and her children. See *Goldberg v. Kelly*, 397 U.S. 254 (1970). The coercive effect could not be more obvious. The welfare recipient is at the discretionary mercy of the caseworker in a much larger and more meaningful sense than the private property owners who asserted their rights in *See* and *Camara*. The abuses which occur during the home visits arise precisely because of the inequality inherent in the relationship

between the recipient and the caseworker, due to the fact that the caseworker has the power and authority to deny, reduce or terminate benefits essential to the recipient's subsistence. Because of the inequality in position, it becomes difficult, if not impossible, for the recipient to even suggest that she has constitutional rights.

Let us note in passing, one more issue. This brief has mentioned privacy, the home and family sanctity. The Appellants suggest some type of *in locis parentis* role occurring by virtue of dispensation of Welfare funds. One duty of a caseworker is to treat all information received from a client as confidential. Yet, spread before this Court and the public eye are intimate details of the James family heretofore "confidential". What other details of the home itself the Welfare Department would choose to smear across its briefs are left only to the imagination of the theoretical guardians of "confidentiality". To be promised and then lose confidentiality after the claim of casework and its concommitant confidentiality is bought at the unwanted price of the loss of demanded constitutional rights is to have a promise "broken to the ear". Cf. *In Re Gault*, 387 U.S. 1 (1967).

Welfare recipients need welfare to survive. *Goldberg v. Kelly, supra.* They value their homes and family. To condition survival on the forfeiture of constitutional rights is itself unconstitutional.

CONCLUSION

The decision of the court below should be affirmed.

Respectfully submitted,

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